

BOARD OF SUPERVISORS OF YORK COUNTY
TRUSTEES OF THE TOWN OF YORK
AMENDED JOINT AGREEMENT
SECOND AMENDMENT

THIS AGREEMENT, made ~~the this~~ 7th day of May, 2001, and amended as of ~~the this~~ 4th day of September, 2001, and as of the ____ day of _____, 2003, by and between the **BOARD OF SUPERVISORS OF YORK COUNTY**, Virginia, party of the first part, hereinafter referred to as "Board," and **TRUSTEES OF THE TOWN OF YORK**, party of the second part, hereinafter referred to as "Trustees."

WHEREAS, the Board and the Trustees entered into certain written agreements, dated February 9, 1978, April 1, 1982, and October 29, 1987, wherein the parties reserved and/or granted certain rights and assumed certain obligations, all as therein set forth; and

WHEREAS, the Board and the Trustees desire to replace said agreements and to redefine the rights, privileges, and obligations of both parties; and

WHEREAS, the Board and Trustees recognize and acknowledge that each would benefit from a cooperative effort with the other, and the Board further recognizes and acknowledges that the Trustees constitute a viable entity which, by working with the Board under the terms and conditions of this Agreement, can provide valuable and needed services to the citizens of York County; and

WHEREAS, on May 7, 2001, the parties entered into a Joint Agreement ("the Agreement") for the development of the Yorktown Waterfront, amended as of September 4, 2001, and the parties-and desire to further amend the agreement as set out herein amend paragraphs 6(B) and 10(D) as set out herein;

NOW, THEREFORE, WITNESSETH: That for and in consideration of the premises and the sum of TEN DOLLARS (\$10.00) to each of the parties hereto paid by the other, and for other good and valuable consideration, receipt of all of which is hereby acknowledged, the parties do hereby amend, restate and readopt the ~~a~~Agreement as follows:

1. **DEFINITIONS**

The following terms, when used in this ~~a~~Agreement, shall have the meaning indicated below except when the intent clearly appears to the contrary.

A. Yorktown Pier: A wood pier approximately 480 feet long, built, owned and operated by the Board from Water Street at the foot of Comte de Grasse Street (near Cornwallis Cave) extending into the York River to a cofferdam constructed by the

Commonwealth of Virginia. For the purpose of this agreement, the Yorktown Pier shall include all associated improvements, including a kiosk located near Water Street, three concrete mooring dolphins, and all utilities.

B. Yorktown Waterfront: All that waterfront property owned by the Trustees in the Town of York, containing Approximately 1300 linear feet of shoreline, waterfront property, held in trust by the Trustees, located on the northeast side of Water Street between the intersection of Water and Read Streets and the eastern boundary of Assessor's parcel No. 18A-11D, reflecting however a boundary line adjustment to be consummated by the parties as set out in paragraph 13, below. The Yorktown Waterfront includes all property held in trust by the Trustees that was improved during 1978 with financial assistance from the Federal Land and Water Conservation Fund, subject however to the referenced boundary line adjustment, and including the beach area and the Church Street stairs. Upon the completion of the boundary line adjustment and recordation of a boundary line adjustment plat and deed, the Yorktown Waterfront shall include the waterfront property owned by the Trustees as a result of the adjustment. For the purpose of this agreement, the Yorktown Waterfront also includes any and all beach existing from time to time located northeast of the Virginia Department of Transportation's concrete sea wall located between Read and Comte de Grasse Streets, but shall not include the Board-owned property.

C. Yorktown Wharf: A concrete wharf, now demolished, approximately 62' x 188' and previously located on the York River approximately 270 feet southeast of the Coleman Bridge.

D. Ballard Street Pier: a pier proposed to be constructed, generally as depicted on the Conceptual Master Plan, at the foot of Ballard Street extended and to be owned and operated by the County.

~~E. Observation Pier: A pier proposed to be constructed as depicted on the Conceptual Master Plan in the same vicinity as the existing Yorktown Wharf and to be owned and operated by the Board.~~

E. Upriver Pier: A pier to be constructed approximately 430 200— feet downriver (southeast) of the right-of-way line for the Coleman Bridge on land to be acquired by the Trustees as a result of the boundary line adjustment referenced in Paragraph 13,below, capable of accommodating small recreational boats, but not shown on the Conceptual Master Plan. The Upriver Pier shall be constructed in general conformance with the Conceptual Master Plan attached hereto as Exhibit A.

F. Conceptual Master Plan: The term "Conceptual Master Plan" shall include the detailed concept plan for the Riverwalk (approved by the Trustees September 8, 1997) and the Waterfront/Wharf Area ~~plan~~ of Carlton Abbott and Partners dated January 3, 2003,

entitled “Yorktown Waterfront Revitalization Project”, and approved by the Trustees June 5, 2000 and attached as Exhibit A), and any subsequent duly approved amendments or additions thereto.

G. Board-owned property: The term “Board-owned property” shall mean that real property owned by the Board and the site of portions of the proposed development shown on the Conceptual Master Plan, including York County tax map parcels 18A-1-11B, 18A-1-11D, 18A-1-7B, 18A-1-146, 18A-1-147, 18A-1-144, and 18A-1-145. At such time as the Board shall acquire them, the term shall also include Martiau Street extended as it lies between tax map parcels 18A-1-7B and 18A-1-146 and 18A-1-147, and a certain 20’ wide strip of land owned by the Commonwealth of Virginia and lying between the Yorktown Waterfront and tax map parcel 18A-1-11D. Following the boundary line adjustment referenced in paragraph 13, below, the term shall refer to such property as is then owned by the Board.

GH. Consultation: The word “Consult” or “Consultation” used in this Agreement shall denote seeking information or advice from the other party to the extent deemed by the seeking party to be appropriate or necessary.

HI. Approval: Use of the word “Approve” or “Approval” in this Agreement shall require formal consent by the party whose Approval is required (the Board and/or Trustees). Either party may require that confirmation of such Approval be in writing and shall be entitled to rely upon such writing, signed by the chairman or vice chairman, as conclusive evidence that Approval was given in the manner required by law, the rules of the approving body, and any other applicable rule or regulation and that the person so signing holds the office indicated.

IJ. Effective Date: The Effective Date of this Agreement shall be the date on which it shall have been fully executed by both parties.

2. COORDINATION BETWEEN BOARD AND TRUSTEES

The Board will keep the Trustees informed as to operation and maintenance activities and annually will summarize financial aspects of the operation and maintenance of the Yorktown Pier, Yorktown Waterfront, and the Yorktown Wharf. The Trustees acknowledge that the Yorktown Wharf has now been demolished as part of the relocation of the Freight Shed in accordance with paragraph 6(A), below. The Board and the Trustees each confirm and acknowledge that they have approved the Conceptual Master Plan, and that no further approvals are required of either party with respect to the Conceptual Master Plan except with respect to any modifications or amendments that may be proposed. The Conceptual Master Plan describes and graphically illustrates future development of the Yorktown Waterfront, and of the Board-owned property. The Conceptual Master Plan shall at all times conform to the York County Land Use Plan and Zoning Ordinance, and shall be

the formal basis for all capital improvements to the Yorktown Waterfront including any revenue-generating facilities, although the Trustees agree and acknowledge that the final configuration of the Ballard Street Pier and of the Upriver Pier may differ from that shown on the Conceptual Master Plan. After the date of this Agreement, the Board ~~and Trustees~~ may revoke or revise the Conceptual Master Plan as to Board-owned property and as to final design of the piers, but any such revocation or revision affecting property owned by the Trustees shall require Approval of both the Board and Trustees. The Board may also develop and process for incorporation into the York County Land Use Plan a detailed Neighborhood Land Use Plan for Yorktown in order to insure that the Conceptual Master Plan prepared is compatible with and coordinated with the projected land uses in Yorktown.

3. FINANCIAL ASPECTS

A. Yorktown Fund Established: The Trustees and the Board hereby establish the Yorktown Fund for the purposes of operating, maintaining, repairing, and/or improving the Yorktown Pier, the Ballard Street Pier, ~~the Upriver Pier the Observation Pier~~, Yorktown Waterfront, and those improvements shown on the Conceptual Master Plan as being constructed on the Board-owned property, including a restaurant building and adjacent commercial structures, and the parking terrace and adjacent commercial buildings, Yorktown Wharf, or any facility deemed by the Board to be beneficial to the Yorktown Pier, Ballard Street Pier, ~~Observation Pier Upriver Pier~~, the Yorktown Waterfront, and the referenced structures to be built on the Board-owned property. If any structures are built on the Board-owned property other than are shown on the Conceptual Master Plan, the Yorktown Fund may be used for the maintenance, improvement, or upkeep of such structures only with the consent of the Trustees, such consent not to be unreasonably withheld. -and the Yorktown Wharf. The Yorktown Fund may not be used for any purposes that are inconsistent with the current Conceptual Master Plan.

B. Revenues for the Yorktown Fund: All revenue generated by the operation or use of the Yorktown Pier, the Ballard Street Pier, ~~the Upriver Pier the Observation Pier~~, and the Yorktown Waterfront, and from the parking terrace and other commercial structures built on the Board-owned property, and the Yorktown Wharf, including, but not limited to, fees, leases, rents, commissions, and contract proceeds, shall constitute a fund referred to as the Yorktown Fund and shall be deposited and administered as a separate account by the Board in accordance with the terms and conditions of this agreement. The Trustees shall be entitled to keep all revenue received from the Commonwealth of Virginia from the Department of Alcoholic Beverage Control to spend as Trustees deem appropriate. In addition, the Trustees shall be entitled to keep any and all other revenues which are restricted by the Grantor who provides same for use by Trustees. Except for funds which may be retained by the Trustees as aforesaid, the Yorktown Fund shall include all other grants, appropriations and payments received by the Board or the Trustees from governmental agencies, as well as private contributions made for the purposes of operating, maintaining, repairing, and/or improving the Yorktown Pier, Ballard Street Pier, ~~Observation Pier~~, the Upriver Pier, the Board-owned property, and the Yorktown Waterfront, and the Yorktown Wharf.

C. Disbursements from the Yorktown Fund: Disbursements from the Yorktown Fund shall be made at the direction of the Board in accordance with limitations contained in this Agreement. Disbursements for all renovation or improvement projects may only be made if said improvements are consistent with the Conceptual Master Plan. All records and accounts shall be kept and maintained by the Board as fiscal agency for the Yorktown Fund in accordance with generally accepted accounting principles and the fiscal policies of the County and the Commonwealth of Virginia. All financial records and accounts relating

to the Yorktown Fund shall be made available to Trustees for review at their request, or as otherwise allowed by law.

D. Uses of the Yorktown Fund: The Yorktown Fund shall be used exclusively for operating, maintaining, repairing, and/or improving the Yorktown Pier, Ballard Street Pier, ~~the Upriver Pier, Observation Pier,~~ the Yorktown Waterfront, ~~the Board-owned property the Yorktown Wharf,~~ or other facility deemed by the Board to be beneficial to the Yorktown Pier, the Ballard Street Pier, ~~the Upriver Pier, the Observation Pier,~~ the Yorktown Waterfront, or the facilities constructed on the Board-owned property, or for such other development as may be specifically authorized by this Agreement or the Yorktown Wharf and consistent with the Conceptual Master Plan as then in effect, and also with the public interest, the conditions of the 1978 Land and Water Conservation Grant to the extent applicable, and other past or future State and Federal grants, and also for any costs incurred in administering the Yorktown Fund and carrying out any of the functions involved in realizing revenues or making disbursements. The Yorktown Fund shall not be used for any purposes that are inconsistent with the current Conceptual Master Plan. The Yorktown Fund may be used to redeem any bonds issued by the Industrial Development Authority of York County (hereinafter "the IDA") or the Board and issued for the purpose of constructing any of the improvements contemplated by this Agreement, or any site preparation work necessary in connection therewith. Disbursements may also be made to the Trustees in an amount equal to the Trustees' annual insurance premium for general liability insurance covering the Yorktown Trustees with respect to the operation of its properties as public facilities in the same manner and to the same limits as are in force for the Board with respect to the same operations and properties, provided, however, that the Board may instead, at its option, secure liability coverage by naming the Trustees as an additional insured under existing Board policy coverage, in which event the premium shall not be paid to the Trustees. If the Trustees are named as an additional insured on the Board's policy, upon request of the Trustees the Board shall provide the Trustees with a copy of a certificate of insurance evidencing such coverage. After this agreement expires or is terminated, the Yorktown Fund shall be disbursed as provided in paragraph 10.E, below.

E. Yorktown Fund Budget: The Board shall prepare and adopt an annual budget and financial plan for the Yorktown Fund at the same time and in the same manner as the budget for the County of York. This budget shall provide for anticipated expenditures and shall reflect all revenues, including annual appropriations made by the Board necessary to finance these expenditures. Prior to adoption, the proposed annual budget and financial plan shall be sent to the Trustees.

F. Trustees' Budget: If requested by the Trustees, the Board agrees to pay an amount, within its discretion, up to a maximum of \$10,000.00 per year, to the Trustees for operating expenses. The amount of the maximum contribution shall be adjusted annually on each anniversary of the date of this agreement by a percentage equal to the percentage

increase in the U. S. Consumer Price Index for Urban Areas, All Cities, during the same one-year period.

4. OPERATION AND MAINTENANCE OF THE YORKTOWN PIER~~, BALLARD STREET PIER, THE UPRIVER PIER, AND IMPROVEMENTS LOCATED ON THE BOARD-OWNED PROPERTY, AND OBSERVATION PIER~~

A. Operation and Maintenance: The responsibility for the operation and maintenance of the Yorktown Pier~~, Ballard Street Pier, the Upriver Pier, and all contemplated improvements on the Board-owned property, and the Observation Pier~~ shall be the Board's, and they shall be used and maintained as the Board deems necessary or appropriate.

B. Receipts: All docking fees from the Yorktown Pier~~, Ballard Street Pier or Upriver Pier, or the Observation Pier~~ shall be established and collected by the Board and deposited in the Yorktown Fund.

5. OPERATION AND MAINTENANCE OF THE YORKTOWN WATERFRONT

A. Promotion of the Health and Safety of Users: The Board may provide lifeguards as deemed appropriate by the Board for protection of swimmers, and it may employ further methods for protecting health and safety of the users of the Yorktown Waterfront, including regulation of the use of the Yorktown Waterfront and/or the establishment of user fees.

B. Control of Beach and Parking Areas: The Board shall, to the extent that it deems desirable, provide for such control over the beach and parking areas, regulate public conduct, and provide increased security as the Board deems appropriate. In Consultation with the Trustees, the Board may implement a control plan including one or more of the following:

- (1) a parking control system (Board may also provide free access or reduced fees for county residents and control said reduced parking fees through auto decals or otherwise);
- (2) a beach patrol (with or without user fees established by the Board).
- (3) physical controls in parking areas using gates to control hours of operation; and
- (4) posted hours of operation.

C. Police Protection: The Board shall secure police protection for enforcement of county ordinances at the Yorktown Waterfront through the York County Sheriff's Department and other enforcement agencies available from time to time. The Trustees agree to take any lawful action requested by the Board to enable the Board to secure enforcement or improve enforcement of ordinances and regulations through the Sheriff's Department and the courts. Nothing herein shall make the Board liable to the Trustees for any loss or damages arising from, or alleged to arise from, a failure to provide any such police protection.

D. Maintenance and Repair: At all times during the term of this Agreement, the Board shall maintain the property and facilities thereon in a condition commensurate with the level of care and maintenance provided to other public facilities in the County. Said maintenance and repair responsibility shall include, but is not limited to, litter pickup and removal, sidewalk and parking lot repairs; lawn cutting and maintenance; cleaning and maintenance of buildings; street and site lighting; care of all landscaping and planting beds; artificial beach nourishment; repair and adjustment of existing breakwaters; alterations of planting beds and landscape areas, and repair of existing structures. The Board shall define and determine, within its sole discretion, the scope and quality of appropriate maintenance activities and necessity of repairs, but nonetheless the Board shall comply with any maintenance provisions contained in any leases, license agreements, or permits entered into by the Board with respect to any improvements constructed by the Board on the Yorktown Waterfront pursuant to subparagraph 5.E, below.

E. Improvements:

- (1) The Board, after consultation with the Trustees, and consistent with the Conceptual Master Plan and this Agreement, may make improvements to the Yorktown Waterfront including, but not necessarily limited to, the following:
 - (a) Installation of new offshore breakwaters or similar devices designed to prevent erosion and retain sand along the Yorktown Waterfront and Yorktown Pier;
 - (b) Construction of a new pier at the foot of Ballard Street (the Ballard Street Pier) and a new pier and a new observation deck (the Observation Pier) at the foot of Buckner Street (extended) in the vicinity of the previously existing Wharf (the Upriver Pier). Such facilities shall be owned by the Board and the Board may operate such piers in the same manner and to the same extent as with respect to the existing Yorktown Pier pursuant to Section 4, above;

(c) Construction of such other new buildings and facilities as are depicted on the Conceptual Master Plan. Such facilities may be for the purpose of housing retail uses, restaurants, public convenience facilities, museums and exhibit halls, visitor information centers, and such other uses as are compatible with the Conceptual Master Plan and consistent with the development of the Yorktown Waterfront as a tourist destination. At the request of the Trustees, such newly constructed building shall include a space not to exceed 400 square feet that may be used by the Trustees for an office and/or meeting place. With the prior approval of the Trustees, the Board may construct on the Yorktown Waterfront other buildings for purposes not identified above and not shown on the Conceptual Master Plan as it exists as of the effective date of this Agreement. The Board shall own any such buildings and facilities which it constructs and, with the exception of the breakwaters and Yorktown Pier, the Upriver Pier, and the Ballard Street Pier, ~~and Observation Pier,~~ the Board's ownership interest shall be subject to termination only in accordance with the provisions of Section 10 – Term. The Trustees shall continue to own the land on which such other buildings and facilities are constructed, but such land, including all that portion of the Yorktown Waterfront as is shown in the Conceptual Master Plan, shall be deemed leased to the Board for the duration of the term of this Agreement, and may be subleased by the Board to the IDA subject to the terms of paragraph 5(E)(4), below. Moreover, the Board may sublease to Yorktown Freight Shed Limited Partnership (“the partnership”) that land located underneath the freight shed and such land or easements as may be necessary for access to the freight shed, provided however that the Board shall continue to be obligated to the Trustees to comply with the terms and conditions of this Agreement as it relates to the ownership and use of the freight shed. The Board's ownership of the breakwaters and the piers shall survive this Agreement.

(2) With respect to any improvements referenced in subparagraphs E.1.b and E.1.c above, if construction of any improvement shall be abandoned prior to completion, or if the use of a completed structure shall be abandoned by the Board, the Board shall demolish the structure and repair any damage to the Trustees' property caused by the demolition. Notwithstanding, if the Trustees present evidence satisfactory to the Board that the Trustees have or are able to obtain

funding in an amount necessary to complete such construction and/or maintain the improvement, then, at the Board's option, the Board may convey such incompleated or abandoned structure to the Trustees and the Trustees shall thereafter complete and/or maintain such structure. For purposes of this subparagraph, the Board shall not be deemed to have abandoned any improvement unless the Board shall have ceased all use or construction with no intention of any further use of, or replacement of, the improvement and with no intention of seeking a lessee or occupant for the improvement. In the case of a pier, the Board shall not be deemed to have abandoned the use of the pier unless the shall have been closed to public use, with no repairs having been made nor any actions taken by the Board to commence repairs for a period of at least five years.

- (3) If the Board demolishes any pier referenced in this paragraph 5 with no intention by the Board to construct a replacement, then any easement granted by the Trustees pursuant to paragraph 8.C for the purpose of providing access to the pier shall be deemed vacated, and the Board shall execute such deeds or other documentation as may be reasonably necessary to evidence such vacation on the land records of the York County circuit court.
- (4) In the event that the Board seeks financing for any such improvements through ~~the York County Industrial Development Authority ("the IDA")~~, both parties will cooperate in securing such financing and will comply with a reasonable request by the IDA to execute such documents and assurances as may be required in connection with such financing, provided that neither party shall be required to amend the terms and conditions of this agreement except as is provided in paragraph 10 below. Moreover, if the conditions of any such financing require that the IDA rather than the Board shall hold title to any such improvements, both parties agree that the IDA shall do so provided that the IDA shall agree to be bound by the terms of this agreement to the same extent as is the Board with respect to such property. Moreover, the Board may, without the need for any further approvals from the Trustees, lease or sublease to the IDA any or all of that portion of the Yorktown Waterfront as is shown on the Conceptual Master Plan for a period of time not to exceed the term of this Agreement in order to enable the IDA to develop all or a portion of the improvements contemplated in this agreement, provide however that the IDA shall be obligated to comply with all terms and conditions in this Agreement applicable to the ownership and use of any such facilities. Moreover, the Board may sublease to Yorktown Freight

Shed Limited Partnership that portion of the Yorktown Waterfront as lies beneath the freight shed building and as may be necessary for access to the building. Nonetheless, in either such event, the Board shall remain obligated to the Trustees for the performance of all terms and conditions of this Agreement. Upon the execution of any such sublease, the IDA or the partnership, as the case may be, shall be authorized to exercise any authority granted in this Agreement to the Board to grant licenses or leases with respect to any property located on or to be constructed on the Yorktown Waterfront in accordance with this Agreement. Any such sublease shall expressly obligate the IDA or the partnership to act only as so authorized.

F. Utilities: The Board shall, during the terms of this Agreement, pay all utility costs associated with street and site lighting and the public restrooms, including the cost of electric, water and sewer service, and, after Consultation with the Trustees, shall determine the days and hours which street and site lighting shall be furnished and the public restroom building shall be operated.

6. ~~OPERATION AND MAINTENANCE~~ DEMOLITION OF THE YORKTOWN WHARF

A. ~~Promotion of the Health and Safety of Users: The Board shall, to the extent that it deems desirable, take steps to provide for the health and safety of the users of the Yorktown Wharf.~~ Demolition of Wharf: The Trustees acknowledge that the Board has successfully and satisfactorily demolished the Yorktown Wharf with the consent and approval of the Trustees.

B. Future Use of Freight Shed Building (formerly the Yorktown Post Office): The parties ~~acknowledge that agree that if the National Park Service transfers~~ the title to the freight shed building ~~previously~~ currently located on the Yorktown Wharf ~~has been conveyed to Yorktown Freight Shed Limited Partnership ("the partnership"), with the consent of the Trustees, as evidenced by that certain agreement dated November 7, 2001, by and between the United States of America, the Trustees, the Board, and Yorktown Freight Shed L.P., entitled "Confirmation of Title to Property, Agreement for Reolocation and Renovation of Building, and Deed to Building", and recorded as instrument number 010021997 among the York County land records (which is incorporated herein by reference), to the Trustees, and that~~ the Board ~~shall~~ has ~~relocated~~ the building closer to Water Street as generally depicted on the Conceptual Master Plan. Both parties agree that the Board and the partnership may utilize said building for purposes that are open to the public and that are compatible with the historic character and commercial uses of the area, and in accordance with applicable zoning laws and the current Conceptual Master Plan. Any revenue derived from the use of said building shall be established and collected by the Board and deposited in the Yorktown Fund. The Trustees hereby grant and convey to the

Board and to the partnership, as they shall determine between them, the exclusive right to use, occupy, control and maintain the building during the term of this agreement, ~~together with the right to relocate and renovate the building as set out in Exhibit B attached hereto, beginning as of the effective date of this agreement or as of such time as title to the building reverts to the Trustees, if later,~~ subject, however, to the obligation of the Board and the partnership to renovate and maintain the building as set out in Exhibit B. ~~At the Board's request, the Trustees shall also transfer title to the building to the Board or to another entity named by the Board for the duration of this agreement, or for such longer period of time as is specified in paragraph 10 (D), below.~~ The parties also acknowledge and agree that in the event the building is deemed structurally impossible to renovate move, or if it is damaged beyond practical repair during the relocation process, in the judgment of the Board's consulting engineers and contractors, the Board may demolish the freight shed and construct a replica of the building in the location depicted on the Conceptual Master Plan.

~~C. Wharf Demolition: It is agreed by the parties that subsequent to movement of the freight shed building, and in accordance with the Conceptual Master Plan, the Board will cause the Wharf to be demolished.~~

7. SPECIAL EVENTS

A. Special Events Sponsored by the Board: The Board shall have authority to sponsor and/or co-sponsor sailing regattas and various festivals and activities associated with the annual 4th of July and the Yorktown Day Celebration at the Yorktown Waterfront ~~or the Yorktown Wharf~~. The Board shall also have the authority to sponsor other activities and events subsequent to informing the Trustees of the Board's plans to sponsor or co-sponsor any other activities or special events.

B. Special Events Sponsored by the Trustees: The Trustees shall Consult with the Board prior to sponsoring or co-sponsoring any special events. In order to avoid any conflicts in scheduling special events, the Trustees agree to secure the Board's concurrence prior to conducting said special event if it is proposed for a time or date during which another special event has already been planned by the Board. Trustees also agree to assume all liability for said special events, to arrange for any police protection if required, and to assume full responsibility for cleaning up the area within 24 hours after any special event.

8. AUTHORITY TO SELL PROPERTY OR TO GRANT LEASES, CONCESSIONS, OR EASEMENTS

A. Board's Authority Defined: During the term of this Agreement, the Board shall be authorized to grant leases, permits, concessions, or other rights of use of any or all of the property which is identified in this Agreement as Trustee-owned property (i.e., including the Yorkwotn Waterfront but excluding Trustee-owned property not identified herein), insofar as the same shall be necessary or convenient in the opinion of the Board for

the exercise of the ~~Board's~~ Boards rights under the terms of this ~~a~~Agreement. The Board agrees that said authority shall be exercised in conformance with the current Conceptual Master Plan, or as is otherwise expressly authorized in this Agreement. Notwithstanding the foregoing, the Board ~~shall~~ secure the approval of the Trustees for any lease, permit, concession or other similar right the term of which extends beyond the term of this Agreement as set out in paragraphs 10.A and 10.B. The Trustees' approval shall not be unreasonably withheld.

B. Trustees' Support of Board's Authority: Trustees agree to execute any and all leases, conveyances, or other documents when requested by the Board that are necessary or convenient in the opinion of the Board for the exercise of the Board's rights under the terms of this agreement. The Board agrees that said authority shall be exercised in conformance with the current Conceptual Master Plan and all applicable law.

C. Easements for the Yorktown Pier, the Upriver Pier, and Other Facilities: The Trustees shall, upon request, convey to the Board or other appropriate party at the Board's direction, easements to enable the Board and the public to maintain direct access and utilities to the Yorktown Pier, the Ballard Street Pier, and the ~~Observation~~ Upriver Pier and shall, upon request, execute documents as required to retain existing permits or maintain the use of existing structures or to acquire appropriate or necessary permits in the future. The Trustees also agree that all such easements and permits shall be perpetual except that the Trustees may propose substitute easements providing the same kind and quality of access to the piers as is provided by an original easement, and the Board's consent for the substitution of an easement shall not be unreasonably withheld.

D. Board's Approval Required: The Trustees covenant and agree not to do any of the following affecting the Yorktown Pier, the Ballard Street Pier, the ~~Observation- Upriver~~ Pier, or the Yorktown Waterfront, ~~and the Yorktown Wharf~~ during the term of this Agreement without prior written Approval by the Board or the written Approval of the IDA in the event of a sublease of the Yorktown Waterfront to the IDA as described above:

- (1) grant or permit any concessions;
- (2) operate any concessions;
- (3) lease any of the property or grant any privileges or licenses applicable to the property;
- (4) grant any visual, scenic, historic, or other easements;
- (5) sell, convey, or otherwise dispose of the property or any part thereof or any interest therein.

9. INSURANCE

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~~A.~~At all times during the term of this Agreement the Board shall maintain comprehensive full-value replacement coverage property insurance on all the facilities constructed, installed and maintained pursuant to the terms of the Agreement. Subject to necessary appropriations, the Board shall use any such insurance proceeds to restore any damaged facility as near to its original condition as is reasonably practicable. If in the event of a property loss, the Board has the opportunity to effect repairs and restoration through emergency grants, the Trustees agree to execute and honor any reasonable conditions or assurances consistent with this Agreement that may be required.

~~A.~~

10. TERM

A. This ~~a~~Agreement shall be in effect for a period of thirty (30) years from May 7, 2001 ~~made as of September 4, 2001~~ ~~the Effective Date~~, except that it shall extend for a longer term under the circumstances set out in subparagraph B:

B. (1) In the event the Board finances the construction of any aspect of the Conceptual Master Plan for a term of thirty (30) years, the term of the Agreement shall automatically be extended until one (1) year after the last debt payment, but the term of the agreement shall not extent beyond a total of 35 years from May 7, 2001, without the express written approval of the Trustees.

(2) In the event the Board has an opportunity to finance construction of any aspect of the Conceptual Master Plan with a grant that requires an assurance of Board control of the Yorktown Waterfront for a period longer than thirty (30) years, and the Trustees approve in writing the acceptance of those terms, the Agreement shall automatically extend for the duration of the grant-specified time limits.

C. The Board may terminate this Agreement at any time, with or without cause, upon giving the Trustees no less than one (1) year written notice to that effect. This Agreement shall automatically be renewed for additional ten (10) year terms unless written notice is given to either party at least one year prior to the expiration of the then –current term. Such notice to the Trustees shall be sufficient if given to any one of the Trustees and shall be sufficient as to the Board if given to the County Administrator or any member of the Board.

D. If this Agreement is terminated or not renewed for any reason by either party, as set out above, the Trustees agree to maintain the buildings, facilities and grounds, and the Board agrees to maintain the piers, in a condition equal to their condition at the time of termination for the duration of the useful economic life of such buildings, facilities and

grounds, and piers (reasonable wear and tear excepted), and to maintain public access to and use of said buildings, facilities and grounds, and piers. In addition, the Trustees agree to honor the terms of all leases, licenses, or concessions applicable to such buildings or improvements and any conditions and assurances that may be associated with grants obtained in connection with the improvements, provided that the Trustees shall have had the opportunity to approve any terms or conditions of any lease, license, concession, or grant that shall continue in effect after the date of the expiration of the terms of this Agreement as set out in paragraphs 10.A and 10.B, above. Moreover, title to County-owned buildings and facilities, other than the breakwaters and piers, shall be transferred to the Trustees, and the Board shall execute any deeds, assignments, or other documents as may be reasonably required to evidence the conveyance to the Trustees of all such buildings and assignment of all associated leases and permits, and shall assign or convey to the Trustees any security deposits or advance payments of rent that may be held by the Board with respect to any such leases and permits. Notwithstanding the foregoing, acknowledging that the Board and Yorktown Freight Shed Limited Partnership have ~~in the event the Board~~ undertakes the renovation of the freight shed building through a program which seeks to ~~takes~~ advantage of state and/or federal historic building renovation tax credits, title to the building may be retained by the Board, or by the a partnership ~~or other entity created by the County~~, for such period of time not to exceed 45 years as may be required by applicable tax laws for the realization of such tax credits. During the term of this Agreement, the Board shall establish and maintain reserve accounts sufficient to pay for one year's estimated costs of maintenance and repair of any such improvements, or as may be required in accordance with the provisions of any applicable leases or permits, and upon the nonrenewal or termination of this Agreement shall transfer such accounts to the Trustees for the purpose of performing such maintenance or repair. The obligation of the Trustees to maintain buildings and other improvements pursuant to this paragraph shall only be to the extent of income derived from leases, permits and licenses with respect to such buildings and improvements, any reserve accounts transferred to the Trustees by the Board, and any other income (including grants) realized by the Trustees with respect to such buildings and improvements.

E. Upon such termination or non-renewal in accordance with this paragraph 10, the Yorktown Fund shall be distributed to the parties as follows: First, to the Trustees up to a sum equal to the amount by which the expected annual excess of operating and maintenance costs of any improvements constructed on the Yorktown Waterfront which are to be owned by the Trustees exceeds expected annual income from such improvements, as determined by a financial analysis of such income and costs. The financial analysis shall be performed by a person or company acceptable to both parties, and shall base estimates of income and costs on an analysis of income and costs of such improvements over the five previous years, as well as an analysis of the age and condition of the improvements and the likelihood and extent of any repairs that are expected to be incurred in the ensuing year. Second, the balance (if any) shall be disbursed to the Board.

11. DEFAULT

In the event of a default by either party, the nondefaulting party may seek specific performance of this Agreement in the York County Circuit Court as the sole remedy for such default, in which event the prevailing party shall be entitled to an award of attorneys fees and costs incurred in the prosecution or defense of such proceeding.

12. USE OF EASEMENT

The parties acknowledge that the Trustees own an easement for public passage 19.5 feet in width across a certain parcel of land owned by the Board and located at 400 Water Street, said easement having been created by a deed recorded in Deed Book 72, pages 441-442. The Trustees hereby convey to the Board the right to construct improvements, to install landscaping, and to implement alterations in the grade and contour of the ground within the area encompassed by the easement, provided that such work or such improvements are for the purpose of providing public parking facilities, or a public park or open space (including, if desired by the Board, a stage and/or band shell for theatrical or musical performances), or other tourist-oriented and public recreational purposes generally consistent with the incorporation of the property into the overall development of the Yorktown Waterfront. The rights conveyed to the Board by this paragraph are not assignable and shall terminate upon the conveyance by the Board of the parcel over which the easement lies, except that any improvement constructed by the Board in accordance with this paragraph may continue to exist for so long as they are used for the purposes described herein. Nothing herein shall be deemed to limit the authority of the Board to use the land contained within the easement for purposes not inconsistent with the use of the easement by the Trustees. This provision shall survive the termination or nonrenewal of this Agreement.

13. VACATION AND CONVEYANCE OF VARIOUS INTERESTS; BOUNDARY LINE ADJUSTMENT:

- A. Martiau Street Extended: The Trustees agree to take such actions as may be necessary to vacate as a public street that unimproved portion of Martiau Street as is not contained within the state's secondary system of highways, and to convey to the Board the interest (if any) that the Trustees may own in the property contained within the vacated street. Provided that it shall be determined that the Trustees own any interest in such property, the Trustees agree to take such actions as are necessary to convey the property to the Board in consideration of the sum of \$9,900.00, such amount to be paid in the form of a credit to the Yorktown Fund on behalf of the Trustees in that amount.
- B. Easement at 400 Water Street: The Trustees agree to take such actions as are required to vacate as a public right-of-way that easement 19.5 feet in width and described in paragraph 12, above, and to convey to

the Board any interest that the Trustees may own in the land conveyed within the easement. In exchange for the vacation and conveyance, the Board shall pay compensation to the Trustees in the amount of \$2,600.00, such sum to be paid in the form of a credit to the Yorktown Fund on behalf of the Trustees in that amount.

C. Boundary Line Adjustment: The Trustees and the Board both agree to take such actions as are necessary to readjust the common boundary line between the property owned by the Trustees (i.e., the Yorktown Waterfront) and the adjacent property owned by the Board (i.e., the Board's waterfront property) in conformance with that sketch plan attached hereto as Exhibit C. The parties acknowledge that the boundary line adjustment shall require the mutual conveyance of property, and agree that upon the completion of the boundary line adjustment the term "Yorktown Waterfront" as used in this Agreement shall mean all that waterfront property then owned by the Trustees, and the term "Board-owned property" shall include all that waterfront property then owned by the Board. That parties also acknowledge that the Commonwealth of Virginia owns a 20' wide strip of land separating the Trustees' property from the Board's property, and that the accomplishment of the proposed boundary line adjustment is subject to the acquisition of the 20' strip by the Board from the Commonwealth.

D. Preparation of Plats and Deeds: The Board shall, at its own costs, prepare and obtain all necessary approvals for any plats as may be required to accomplish the vacations, conveyances, and boundary line adjustment referenced above, and shall prepare all necessary deeds, subject however to the Trustees' review and approval of all plats and deeds, and the Board shall pay all necessary recording costs.

134. LEGISLATIVE AND LEGAL ACTION

A. During the term of this agreement, neither party shall make any attempt to propose or support legislation before the Virginia General Assembly altering the terms and conditions of this agreement or the authority of either party to remain bound by this agreement or to fulfill its obligations hereunder. The Board shall not make any attempt to propose or to support any legislation dissolving the Yorktown Trustees.

B. During the term of this agreement, neither party shall institute or voluntarily file any petition or other legal action in any court of law for the purpose of challenging the legal authority of either party to enter into this agreement or to enforce or abide by any of its terms and conditions.

C. In the event that any part of this agreement is declared null and void by any court of law, such declaration shall not be deemed to operate as a termination of this agreement, and all remaining portions of this agreement shall continue in full force and effect.

145. TERMINATION OF ALL PREVIOUS AGREEMENTS

The Board and the Trustees hereby agree that those certain agreements dated February 9, 1978, April 1, 1982, and October 29, 1987, respectively, be, and they are hereby, cancelled and void and of no further force and effect as to either party.

156. DUPLICATE ORIGINALS

This agreement may be signed in duplicate originals, any one of which shall be deemed an original for all purposes.

167. RECORDATION

This agreement may be recorded among the land records of York County.

178. SUBJECT TO ANNUAL APPROPRIATIONS

If the performance by either party of any act or obligation pursuant to this agreement requires the expenditure or commitment of any public funds beyond the fiscal year in which this agreement becomes effective, so that such obligation to commit or expend funds constitutes long-term debt prohibited by Article VII, Section 10, of the Constitution of Virginia and statutes adopted in furtherance thereof, the performance of such act or obligation is subject to annual appropriations by that party. Nonetheless, the failure to so appropriate necessary funds shall not operate to void this agreement in its entirety, but shall only relieve such party of the performance of such obligation or act. However, the other party shall be entitled to any remedies for nonperformance as may be available at law or at equity, provided that no such remedy shall be available which would violate any constitutional or statutory prohibition against the creation of long-term debt by a local governmental body. Both parties will act in good faith to appropriate such funds as may be necessary to the complete performance of the terms and conditions of this Agreement, to the extent that such funds are reasonably available without compromising the performance of other legal or moral obligations of either party.

IN WITNESS WHEREOF, the Trustees have caused their name to be hereto subscribed by their Chairman or Vice-Chairman, either of whom being thereto duly authorized by action of the Trustees granting such authority at a meeting called and conducted in accordance with law on the 16th day of August, 2001, and the Board has caused its name to be hereto subscribed by the County Administrator, he being thereto duly authorized by Resolution No. R 01-155, passed at a regular meeting of the Board called and conducted in accordance with law on the 4th day of September, 2001.

BOARD OF SUPERVISORS OF YORK

COUNTY, VIRGINIA

By _____
County Administrator

TRUSTEES OF THE TOWN OF YORK

) By _____ (SEAL
Chairman Edith M. Elliott J. Bryce Hollingsworth, |

) By _____ (SEAL
Paul W. Crockett, Jr.

) By _____ (SEAL
Gary A. Freeman

) By _____ (SEAL
J. Bryce Hollingsworth Edith M. Elliott |

) By _____ (SEAL
Charles B. Thomas

Approved as to form:

County Attorney

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20013, by James O. McReynolds, County Administrator of the County of York.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20013, by ~~Edith M. Elliott~~ J. Bryce Hollingsworth, Chairman of the Trustees of the Town of York.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2004³, by Paul W. Crockett, Jr.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2004³, by Gary A. Freeman.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20013, by ~~J. Bryce Hollingsworth~~ Edith M. Elliott.

Notary Public

My commission expires: _____

COMMONWEALTH OF VIRGINIA,

County of York, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20013, by Charles B. Thomas.

Notary Public

My commission expires: _____